

First Union Commercial Corporation

One First Union Center
Charlotte, North Carolina 28288-0739
704.374-4900

**FIRST
UNION**

RECORDATION NO.

18056

FILED 1423

2-364A054

DEC 29 1992 - 1 40 PM

December 28, 1992

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Room 2303
Washington, D.C. 20423

DEC 29 1 31 PM '92
NOTION OF RECORDATION UNIT

RE: RECORDATION OF DOCUMENTS RELATING TO LEASE OF 45 ACF
PRESSURIZED HOPPER CARS

Dear Sir or Madam:

On behalf of First Union Commercial Corporation and filed pursuant to the requirements set forth in Part 1177 of Title 49 of the Code of Federal Regulations are one (1) original set and one certified true copy of the documents described below to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

A short summary of the documents in accordance with section 1177.3 (d) (8) of Title 49 is as follows:

- (1) Equipment Lease between Crystal Car Line, Inc., as Lessee, and First Union Commercial Corporation, as Lessor, dated as of August 26, 1992 relating to the lease of 45 ACF pressurized hopper cars:
- (2) Schedule of Leased Equipment No. I with attachments between Crystal Car Line, Inc. and First Union Commercial Corporation dated as of August 26, 1992.

The names and addresses of the parties to the transactions shown above are as follows:

Crystal Car Line, Inc.
Post Office Box 8000
International Plaza
Englewood Cliffs, New Jersey 07632

First Union Commercial Corporation
One First Union Center
Charlotte, North Carolina 28288-0738

A description of the equipment covered in the above-referenced documents is provided in Exhibit A attached hereto.

The fee for recording these documents will be supplied by the Washington Service Bureau. The original set of documents along with the receipt for recording and any extra copies not required by your office should be given to the individual from the Washington Service Bureau, who has been selected by First Union to present this filing to your office.

Sincerely,

FIRST UNION COMMERCIAL CORPORATION

Linda H. Minter

Linda H. Minter
Assistant Vice President

LHM:cht

Enclosure

3259Y/3

3259Y/4

EXHIBIT A

Forty-five (45) ACF pressurized differential hopper cars bearing car identification numbers CCLX51006 through CCLX51050.

Interstate Commerce Commission
Washington, D.C. 20423

12/29/92

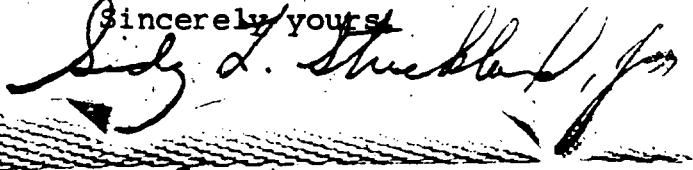
OFFICE OF THE SECRETARY

Linda H. Minter
Assistant Vice President

First Union Commercial Corporation
One First Union Center
Charlotte N.C. 28288-0739

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/29/92 at 1:40pm, and assigned re-recording number(s). 18056 + 18056-A

Sincerely yours,

Secretary

SIDNEY L. STRICKLAND, JR.

Enclosure(s)

SE-30
(7/79)

EQUIPMENT LEASE

THIS EQUIPMENT LEASE is made and entered into by Lessor and Lessee as of August 26, 1992.

LESSOR:

FIRST UNION COMMERCIAL CORPORATION
ONE FIRST UNION CENTER
CHARLOTTE, NORTH CAROLINA 28288-0738

RECORDATION NO. **18056** FILED 1425

DEC 29 1992 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

LESSEE:

CRYSTAL CAR LINE, INC.
POST OFFICE BOX 8000
INTERNATIONAL PLAZA
ENGLEWOOD CLIFFS, NEW JERSEY 07632

W I T N E S S E I H:

WHEREAS, Lessor desires to lease the Equipment (as hereinafter defined) to Lessee, and Lessee desires to lease the Equipment from Lessor, pursuant to the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises and of the covenants hereinafter contained, and other valuable considerations, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

For purposes of this lease and related documents, the following definitions will apply:

1.1 "Acceptance Certificate" means the Acceptance Certificate(s) substantially in the form attached hereto as Exhibit A to be executed by Lessee from time to time for the purpose of accepting the Equipment for lease hereunder and which, upon execution thereof, is incorporated herein by reference.

1.2 "Acceptance Date" means the date on which Lessee unconditionally accepts the Equipment for lease hereunder as evidenced by the execution of the Acceptance Certificate dated such date and the delivery thereof within ten (10) days of said execution, which Acceptance Certificate is incorporated herein.

1.3 "Basic Rent" means the rent payable during (i) the Basic Term as set forth in the Schedule of Leased Equipment, and (ii) the Renewal Term.

1.4 "Basic Term" means the period from and inclusive of the Basic Term Commencement Date and continuing for the number of calendar months set forth in the Schedule of Leased Equipment, unless this lease is sooner terminated pursuant to the provisions hereof.

1.5 "Basic Term Commencement Date" means the first day of the calendar month next following the Acceptance Date unless the Acceptance Date is the first day of the calendar month, in which event the Basic Term Commencement Date shall be the Acceptance Date.

1.6 "Equipment" means the goods enumerated on each Schedule of Leased Equipment that is now or may hereafter from time to time become attached hereto and incorporated herein by reference.

1.7 "Interim Rent" means the rent payable during the Interim Term as set forth in the Schedule of Leased Equipment.

1.8 "Interim Term" means the period commencing on the Acceptance Date, if the Acceptance Date is other than the first day of a calendar month, and unless this lease is sooner terminated pursuant to the provisions hereof, ending on the last day of the calendar month in which the Acceptance Date occurs, both dates inclusive.

1.9 "Rent" means the Supplemental Rent, Interim Rent and Basic Rent.

1.10 "Renewal Term" means the period following the end of the Basic Term with respect to which Lessee has the option to renew this lease pursuant to Section 11.2 hereof.

1.11 "Schedule of Leased Equipment" means the document(s) now or hereafter from time to time executed by Lessor and Lessee for the purpose of, among other things, describing the Equipment to be leased by Lessor to Lessee, the lease Term for the Equipment listed thereon and Lessee's obligations with respect to payment, and which, upon execution thereof, shall be incorporated herein by reference.

1.12 "Supplemental Approval" means the Supplemental Approval(s) substantially in the form attached hereto as Exhibit B, to be executed from time to time by Lessee for the purpose of instructing Lessor to make payment of the purchase price or a portion thereof of the Equipment to the manufacturer or supplier of the Equipment and by Lessor to reflect the date on which Lessor makes such payment of the purchase price, and which, upon execution thereof, shall be incorporated herein by reference.

1.13 "Supplemental Rent" means the rent payable during the Supplemental Term as set forth in the Schedule of Leased Equipment.

1.14 "Supplemental Term" means the period commencing on the date Lessor makes payment of the purchase price or a portion thereof of the Equipment to the manufacturer or supplier, if such date is other than the Acceptance Date, as indicated by Lessor in the Supplemental Approval, and unless this lease is sooner terminated pursuant to the provisions hereof, ending on the day preceding the Acceptance Date, both dates inclusive.

1.15 "Tangible Net Worth" means, as at any date of determination, the excess of total assets over total liabilities, total assets and liabilities each to be determined in accordance with generally accepted accounting principles applied on a consistent basis, excluding, however, from the determination of total assets (i) all reserves carried and not deducted from assets, (ii) treasury stock and capital stock, obligations or other securities of, or capital contributions to, or investments in any subsidiary, (iii) securities which are not readily marketable, (iv) cash held in a sinking or other analogous fund established for the purpose of redemption, retirement or prepayment of capital stock or debt, and (v) any write-up in the book value of any asset resulting from a revaluation thereof.

1.16 "Term" means the full term for each Schedule of Leased Equipment, including the Supplemental Term (if any), the Interim Term (if any), the Basic Term, and the Renewal Term (if any).

SECTION 2. LEASE

2.1 Lease of Equipment. Lessor hereby rents and leases to Lessee, and Lessee hereby rents and leases from Lessor, the Equipment listed on any Schedule of Leased Equipment now or hereafter from time to time attached hereto and incorporated herein by reference. Except as provided in Section 10 or otherwise provided herein, Lessor shall not take any action that will interfere with Lessee's quiet enjoyment of the Equipment.

2.2 Finance Lease Status. The parties agree that this lease is a "finance lease" as such term may be defined in the provisions of any Uniform Commercial Code applicable hereto. Lessee acknowledges that: (i) Lessor has not selected, manufactured or supplied the Equipment; (ii) Lessor has acquired the Equipment or the right to possession and use of the Equipment in connection with this lease; and (iii) one of the following has occurred:

(a) Lessee has received a copy of the contract by which Lessor acquired the Equipment or the right to possession and use of the Equipment before signing this lease;

(b) Lessee's approval of the contract by which Lessor acquired the Equipment or the right to possession and use of the Equipment is a condition to effectiveness of this lease;

(c) Lessee, before signing this lease, has received an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the Equipment, provided to Lessor by the person supplying the Equipment in connection with or as part of the contract by which Lessor acquired the Equipment or the right to possession and use of the Equipment; or

(d) Lessor, before Lessee signs this lease, has informed Lessee in writing (i) of the identity of the person supplying the Equipment to Lessor, unless Lessee has selected that person and directed Lessor to acquire the Equipment or the right to possession and use of the Equipment from that person, (ii) that Lessee is entitled to the promises and warranties, including those of any third party, provided to Lessor by the person supplying the Equipment in connection with or as part of the contract by which Lessor acquired the Equipment or the right to possession and use of the Equipment, and (iii) that Lessee may communicate with the person supplying the Equipment to Lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

SECTION 3. TERM

The Term for each Schedule of Leased Equipment shall commence on the earlier of the date the Supplemental Term commences or the Acceptance Date and shall terminate, unless earlier terminated as provided herein, on the last day of the Basic Term, or if this lease is renewed pursuant to Section 11.2 hereof, on the last day of the Renewal Term thereof.

SECTION 4. RENTAL PAYMENTS

4.1 Amount and Times of Payment. As rental for the Equipment, Lessee hereby agrees to pay Lessor the Rent specified in each Schedule of Leased Equipment at the times and in the manner set forth therein.

4.2 Place of Payments. All Rent and other payments required to be made to Lessor hereunder shall be made at Lessor's principal office or as may be otherwise directed by Lessor or its assignee.

4.3 Late Charges. Should Lessee fail to pay any part of the Rent or any other sum required to be paid Lessor within fifteen (15) days after the due date thereof, Lessee shall pay a late payment charge equal to two percent (2%) of the delinquent payment.

4.4 Abatement of Payments. There will be no abatement or reduction of payments by Lessee for any reason, including but not limited to, any defense, recoupment, set-off, counterclaim, or any claim (real or imaginary) arising out of or related to any defects, damages, malfunctions, breakdowns or infirmities of the Equipment. Lessee assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever, it being the intention of the parties that Rent shall be paid in all events unless the obligation to pay Rent is terminated as otherwise provided herein.

4.5 Rental Statements. Lessor shall render to Lessee a statement of Rent payable for each rental period (except for the first rental period), and Lessee shall, upon receipt thereof, make payment of the total amount shown thereon at the office of Lessor as designated in such statement. Failure to render such statement, however, shall not relieve or excuse Lessee's obligation to pay Rent hereunder.

4.6 Application of Payments. Any payment received from Lessee may be applied by Lessor at any time against any obligation due and owing by Lessee under this lease or any Schedule of Leased Equipment hereto, in Lessor's sole discretion, notwithstanding any statement appearing on or referred to in any remittance from Lessee or any prior application of such payment. In the event any bankruptcy proceedings are instituted by or against Lessee under the Bankruptcy Code within ninety (90) days after receipt by Lessor of any such payment, such payment shall be deemed applicable to unpaid obligations then due hereunder in the inverse order of maturity.

SECTION 5. RESPONSIBILITIES OF LESSEE

5.1 Maintenance and Operation. Lessee shall operate the Equipment only in the manner for which it was designed and intended (including, without limitation, for storage purposes) or in accordance with the customary practices of Lessee. Lessee shall maintain, inspect, service, repair and overhaul the Equipment or cause the same to be done in accordance with the applicable standards set forth by the Association of American Railroads and the Federal Railroad Administration so as to maintain and keep the Equipment (i) in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear excepted, (ii) to a standard at least equal to the standard and frequency of maintenance performed on other similar railcars owned or leased by Lessee, and (iii) in accordance with the material terms of applicable laws and regulations; provided, however, that for purposes of this Section the material terms of applicable laws and regulations shall include (but not be limited to) any provisions the violation of which would subject either the violator or Lessor to criminal sanctions or which would adversely affect Lessor's title. Throughout the term of this lease, the possession, operation and maintenance of the Equipment shall be at the sole risk and expense of Lessee. No voluntary relinquishment of possession or control of the Equipment shall in any way discharge or diminish any of the Lessee's obligations hereunder, except upon the expiration or termination of this lease.

5.2 Compliance and Use. Lessee agrees that the maintenance, use and operation of the Equipment will not be in violation of the material terms of any statutes, laws, ordinances, regulations and mandatory standards or directives of any governmental agency applicable to the condition, maintenance, use or operation thereof (including the applicable standards of the Association of American Railroads and the rules of the United States Department of Transportation and the Interstate Commerce Commission), which violation could have a material adverse effect on the ownership of the Equipment by Lessor or its use and operation by Lessee; provided, however, that for purposes of this Section, the material terms of any statute, laws, ordinances, regulations and mandatory standards or directives of any governmental agency shall include (but not be limited to) any provisions the violation of which would subject either the violator or Lessor to criminal sanctions or which would adversely affect Lessor's title. Lessee further agrees that the Equipment will at all times (1) be used solely in the conduct of Lessee's business and (2) be located and used within the continental United States; provided, however, so long as Lessor's interest in and title to the Equipment is not jeopardized and re-registration of the Equipment in Lessor's name is not required, Lessee may permit the Equipment to enter into Mexico and Canada solely for purposes of loading and unloading so long as the Equipment, or any portion thereof, is not located outside of the continental United States in excess twenty-five percent (25%) of the time that such Equipment is in use in the continental United States during any month. Lessor shall cooperate with Lessee in connection with Lessee's obtaining approval, pursuant to AAR Circular OT-5 or similar regulation, for the use of Equipment. All reasonable costs incurred by Lessor in connection therewith shall be borne by Lessee.

5.3 Replacement Parts. Lessee, at its own cost and expense, will replace, prior to returning the Equipment pursuant to Section 5.4 hereof, all appliances, parts, instruments, appurtenances, accessories and other equipment of whatever nature ("Parts") which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever (such substituted parts hereinafter called "Replacement Parts"). Lessee shall notify Lessor of any Replacement Part having a per item cost of \$10,000 or more. In addition, in the ordinary course of maintenance, service, repair, overhaul or testing, Lessee may, at its own cost and expense, remove any Parts, whether or not worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, provided that Lessee shall, at its own cost and expense, replace such Parts prior to returning the Equipment pursuant to Section 5.4 hereof. All Replacement Parts shall be free and clear of all liens, encumbrances and rights of others ("Liens") of which Lessee has knowledge after due inquiry; provided, however, that if any Liens exist on any Replacement Parts, Lessee shall remove such Liens within thirty (30) days of knowledge thereof. Additionally, all Replacement Parts shall be in at least as good operating condition as, and shall have a value and utility at least

equal to, the Parts replaced assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof. Immediately upon any Replacement Part becoming incorporated or installed in or attached to the Equipment as above provided, without further act, (i) title to the removed Part shall thereupon vest in Lessee, free and clear of all rights of Lessor, and shall no longer be deemed a Part hereunder, (ii) title to such Replacement Part shall thereupon vest in Lessor, and (iii) such Replacement Part shall become subject to the lease and be deemed part of the Equipment for all purposes hereof to the same extent as the Part originally incorporated or installed in or attached to the Equipment.

5.4 Return of Equipment. Upon the expiration or earlier termination of this lease, as herein provided, Lessee shall return the Equipment at its sole expense to Lessor at a place designated in the continental United States by Lessor in good operating order, repair and condition as when originally received by Lessee hereunder, ordinary wear and tear excepted, and the Equipment will be free and clear of all Liens of which Lessee has knowledge after due inquiry. Notwithstanding the foregoing, if any Liens exist upon the return of the Equipment, Lessee shall remove such Liens within thirty (30) days of knowledge thereof. Any Equipment returned hereunder shall be suitable for use in interchange and in accordance with the applicable standards set forth by the Association of American Railroads.

5.5 Inspection. Lessor shall have the right upon prior notice to Lessee to enter into and upon the premises where the Equipment is located to inspect the Equipment and observe its use during normal business hours.

5.6 Utilities and Operating Expenses. Lessee shall pay all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility service furnished to or used on or in connection with the Equipment during the lease Term. There shall be no abatement of Rent on account of interruption of any such services.

5.7 Taxes. Lessee agrees to pay when due all taxes relating to the Equipment and Lessee's obligations hereunder, including but not limited to, all filing or registration fees, gross receipts tax, sales and use tax, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licenses and charges imposed on the ownership, possession, rental, delivery, transportation or use of the Equipment, together with any interest and penalties, other than taxes on or measured by the net income of Lessor. Upon the expiration or earlier termination of this lease, Lessee shall pay to Lessor any taxes assessed but not yet due and payable.

5.8 Alterations. So long as Lessee is not in default hereunder, Lessee may at its sole cost and expense make any alterations, additions, modifications or attachments (hereinafter collectively called "Improvement(s)") to the Equipment, provided that such Improvements (1) are readily removable without causing damage to the Equipment, (2) do not reduce the value or general usefulness of the Equipment, and (3) are of a kind that customarily are furnished by lessees or purchasers of equipment of the kind subject to this lease. Any such Improvements shall remain the property of Lessee. Lessor shall have the right, at its option exercisable upon written notice given to Lessee not less than ninety (90) days prior to the termination or expiration of the Term of this lease to purchase such Improvements installed on the Equipment and owned by Lessee for a cash price equal to the fair market sales value thereof, and if Lessor does not exercise such option, Lessee shall remove such Improvements at its own expense without causing material damage to the Equipment prior to the return of the Equipment to Lessor.

Lessee may make Improvements which are not readily removable, provided that (1) the value of the Equipment is not reduced, (2) such Improvement will not cause the Equipment to become limited use property within the meaning of Revenue Procedure 76-30, or materially reduce its general usefulness, and (3) such Improvement satisfies the conditions of Section 4(4).03(B) of Revenue Procedure 75-21, as amended by Revenue Procedure 79-48, and is described in subparagraph (i) or (ii) of Section 4(4).03(C) of Revenue Procedure 75-21. Such Improvements which are not readily removable shall become the property of Lessor and subject to the terms of this lease.

5.9 Delivery and Installation Charges; Delivery Receipt. Lessee shall be responsible for the delivery of the Equipment to Lessee's location and the installation at such location.

5.10 Insurance. Lessee shall maintain at its sole cost and expense insurance on all the Equipment covering such risks and in such amounts with such deductibles as required on Exhibit A to the commitment letter, and with such insurance companies as shall be satisfactory to Lessor. All insurance for loss or damage shall provide that losses if any, shall be payable to Lessor, and all required liability insurance shall name Lessor as an additional insured. Lessee shall pay the premiums therefor and deliver to Lessor the certificates of insurance or other evidence satisfactory to Lessor of such insurance coverage. Each insurer shall also agree by endorsement upon the policy or policies issued by it that: (a) it will give thirty (30) days' prior written notice to Lessor of cancellation, non-renewal, or material modification of such policy and ten (10) days' prior written notice for non-payment of premium; and (b) the coverage of Lessor shall not be terminated, reduced or affected in any manner regardless of any breach or violation by Lessee of any warranties, declarations or conditions of such insurance policy or policies. The proceeds of such insurance, at the option of Lessor, shall be applied: (a) toward the replacement, restoration or repair of the Equipment, or (b) toward payment of the obligations of Lessee hereunder. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute all documents, checks or drafts received in payment of loss or damage under any such insurance policy.

5.11 Risk of Loss; Stipulated Loss Value. Lessee hereby assumes and shall bear the entire risk of loss, theft, destruction, and damage to the Equipment from any and every cause or casualty whatsoever. No loss, theft, destruction or damage to the Equipment or any part thereof shall relieve Lessee from its obligations to pay Rent or perform any other of its obligations under this lease, which shall continue in full force and effect. In the event of any such loss, theft, destruction or damage to the Equipment, Lessee shall at the option of Lessor: (a) continue to pay the Rent due hereunder and repair or replace (with clear title thereto in Lessor) the Equipment in good repair, condition and working order, or (b) purchase the Equipment by paying Lessor in cash the "Stipulated Loss Value" as set forth in the Schedule of Leased Equipment attached hereto and incorporated herein by reference. Upon such payment, this lease shall terminate with respect to such item of Equipment and Lessee thereupon shall become entitled to such item of Equipment as-is and where-is without warranty, express or implied, with respect to any matter whatsoever. Notwithstanding anything to the contrary contained herein, Lessee's liability to Lessor for any loss, theft, destruction and damage to the Equipment shall not exceed such Stipulated Loss Value as set forth in the Schedule of Leased Equipment attached hereto and incorporated herein by reference; further, in the event that any amounts recovered or realized by either party from any source whatsoever exceed the Stipulated Loss Value of the Equipment as set forth in the Schedule of Leased Equipment attached hereto and incorporated herein by reference, Lessee shall be entitled to receive the entire amount of such excess.

5.12 Performance by Lessor of Lessee's Responsibilities. Any performance required of Lessee or any payments required to be made by Lessee may, if not timely performed or paid, be performed or paid by Lessor, and in any event, Lessor shall be immediately reimbursed for such payments and for actually incurred reasonable costs and expenses, legal or otherwise, associated with the payments or other performance by Lessor. Notwithstanding the foregoing, Lessor shall attempt to provide Lessee telephonic, facsimile or other written notice at least three (3) days prior to the payment of any amount on behalf of Lessee; provided, that no notice shall be required with respect to Lessee's failure to timely pay insurance, taxes or any other amount with respect to which the failure to pay would materially jeopardize Lessor's interest in the Equipment or rights hereunder. In the event that Lessor fails to provide notice as required by the foregoing sentence, no late charges or interest will accrue with respect to such payment until such notice is provided. Except as set forth in this Section 5.12, Lessor's failure to provide notice of its payment of an amount required to be made by Lessee hereunder shall not otherwise affect Lessor's rights or remedies hereunder.

5.13 Payment of Fines. Lessee shall pay within ten (10) days of billing by Lessor any fines imposed in connection with the Equipment or the use thereof plus a service or handling fee of ten dollars (\$10.00) per fine for any and all payments of fines made by Lessor, plus all legal fees and expenses of Lessor made necessary by the acts of Lessee or its agents which resulted in such fines.

5.14 Financial Statements. During the Term of this lease, Lessee shall furnish Lessor with publically available information, financial or otherwise, relating to Lessee or the Equipment as Lessor shall request.

5.15 Hold Over. If Lessee shall retain possession of any item of Equipment during any period after the expiration or earlier termination of this lease, Lessee shall be deemed to be holding over on a month-to-month basis, and all of the terms hereof shall remain in full force and effect, including the payment by Lessee of Rent.

SECTION 6. EQUIPMENT

6.1 Title. Title to the Equipment and any and all alterations, additions, repairs, replacements or modifications thereto, shall be in the name of Lessor. If requested by Lessor, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags and maintain such markings during the Term of this lease so as to clearly disclose that title to the Equipment is in Lessor.

6.2 Liens. Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or claim on or with respect to the Equipment or any interest therein. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time; provided, however, mortgages, pledges, liens, charges, security interests, encumbrances or claims arising by or through Lessor shall be the responsibility of Lessor.

6.3 Inspection, Acceptance and Written Notice of Defects. Immediately upon the Equipment being delivered to Lessee and placed in service, Lessee shall inspect the Equipment, and, if the Equipment is found to be in good order and Lessee is satisfied with the Equipment, Lessee shall execute and deliver to Lessor an Acceptance Certificate. Lessee's execution of the Acceptance Certificate shall constitute Lessee's acknowledgement and agreement that, as between Lessor and Lessee, it shall be conclusively presumed that Lessee has fully inspected and acknowledged that the Equipment is in good condition and repair, has been properly installed and is performing satisfactorily, and that Lessee is satisfied with and has accepted the Equipment in such good condition and repair.

6.4 Personal Property. The Equipment is, and shall at all times be and remain, personal property, notwithstanding that the Equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon, real property or any building thereon or any fixtures, or attached in any manner to what is permanent by any means of cement, plaster, nails, bolts, screws or otherwise. Upon request of Lessor, Lessee shall obtain, as to any place where the Equipment is located, a waiver from the landlord and mortgagee thereof with respect to any rights they may have in and to the Equipment or the rights of levy or seizure thereon.

SECTION 7. WARRANTIES AND REPRESENTATIONS OF LESSEE

Lessee warrants and represents to Lessor (all such representations and warranties being continuing) that:

(a) In determining the Recovery Deduction of the Equipment for each taxable year, it is intended that Lessor shall be entitled to utilize the Accelerated Cost Recovery System provided for in Section 168 of the Internal Revenue Code of 1986, as amended (the "Code"), including the utilization of the depreciation deductions computed in accordance with Section 168(b)(1) of the Code, for the particular class of recovery property to which such Equipment relates and as set forth in the Schedule of Leased Equipment.

(b) The Equipment will be useful or usable by Lessor at the end of Term thereof for purposes other than continued leasing by or transfer to any member of Lessee Group (as such term is defined in Rev. Proc. 75-21), and it is reasonable to assume that, at the end of the Basic Term of the Lease, the Equipment will have a remaining useful life of the longer of one year or twenty percent (20%) of the original useful life and a residual value (computed without regard to inflation) equal to at least twenty percent (20%) of Lessor's cost of the Equipment.

(c) Lessor's cost for the Equipment will be equal to the fair market value of the Equipment.

(d) The Equipment will not require any improvements, modification or additions (other than ancillary items of removable equipment of a kind that are customarily selected and furnished by purchasers or lessees of similar equipment) in order to be rendered complete for its intended use by Lessee, and Lessor will not be required to take into income the cost of any improvements.

(e) If Lessee is a corporation, it is duly organized, existing and in good standing under the laws of the state of its incorporation and is duly qualified as a foreign corporation authorized to transact business in, and is in good standing under the laws of, each other state in which the Equipment is to be located; the leasing of the Equipment from Lessor by Lessee, the execution and delivery of this lease, all Schedules of Leased Equipment to be executed pursuant hereto, and all related instruments and documents, and compliance by Lessee with the terms hereof, (i) have been duly and legally authorized by appropriate corporate action taken by Lessee; and (ii) are not in contravention of, and will not result in a breach of, any of the terms of Lessee's Charter or its By-Laws, or any loan agreements or indentures of Lessee, or any other contract, agreement or instrument to which Lessee is a party or under which it is bound; and Lessee has adequate corporate power to lease the Equipment from Lessor under this lease.

(f) This lease, the Schedules of Leased Equipment, and all related instruments and documents, when executed by Lessee and delivered to Lessor, will constitute valid and legally binding obligations of Lessee, enforceable against Lessee in accordance with the terms thereof, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar applicable laws affecting creditors rights generally or the equitable principles or judicial decisions which may affect the remedies provided therein; however, none of such laws now in force and none of such judicial decisions will make the rights and remedies provided in this lease, the Schedules of Leased Equipment and the related instruments and documents, as the case may be, taken as a whole, inadequate for enforcing payment of Rent and for enforcing the rights created herein and therein.

(g) The right, title and interest of Lessor in and to the Equipment described in this lease and the Schedules of Leased Equipment, and the Rent therefrom, will not be materially adversely affected or impaired by the terms of any loan agreement or indenture or any other contract, agreement or instrument to which Lessee is a party, or under which it is bound. There are no suits pending or threatened against Lessee which, if decided adversely to Lessee, might materially adversely affect Lessee's financial condition or impair the title of Lessor to the Equipment.

(h) The fair salable value of Lessee's and Guarantor's assets exceed its liabilities and Lessee meets its debts as they mature and Lessee will maintain such solvent conditions as long as this lease is in effect; Lessee's balance sheet, income statements, and other financial statements or information which have been delivered to Lessor, fairly and completely state Lessee's financial condition; there has been no material adverse change in the financial condition of Lessee as reflected in the statements since the date thereof; and the statements do not fail to disclose any facts which might materially adversely affect Lessee's financial condition.

SECTION 8. INDEMNIFICATION

8.1 Generally. Except for the gross negligence or willful misconduct of Lessor, Lessee hereby agrees to indemnify, protect and save Lessor or its assigns harmless from any and all liabilities, liens, obligations, losses,

claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, imposed or incurred by or asserted against Lessor or its assigns, arising out of, connected with, or resulting directly or indirectly from the Equipment, including without limitation, the manufacture, purchase, lease, possession, operation, condition (including all defects whether or not discoverable by either party hereto), delivery, selection, use, or return of the Equipment, or by operation of law. Lessee shall give Lessor or its assigns prompt written notice of any matter hereby indemnified against and agrees that upon notice by Lessor or its assigns of the assertion of such a claim, action, damage, obligation, liability or lien, Lessee shall assume full responsibility for the defense thereof.

8.2 Tax Indemnification. If as a result of: (x) any breach of any representation, warranty or covenant of Lessee contained in this lease; (y) any representation or warranty of Lessee in this lease not being correct; or (z) any act or failure to act of Lessee, a Determination (as defined in paragraph 8.4 of this Section 8) shall be made that Lessor for any taxable year as to the Equipment shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of, or shall be required to recapture all or any part of federal, state or local income tax depreciation deductions, computed with respect to the Equipment ("Depreciation Deduction") on the basis as to federal income tax deductions of the applicable percentage provided under Section 168 of the Code for three (3), five (5), seven (7) or ten (10) year "recovery property", whichever is applicable as set forth in the Schedule of Leased Equipment and as defined in Section 168 of the Code, and as to state and local income tax depreciation deduction on the basis applicable under each such jurisdiction's tax laws, (any such loss, unavailability, failure to have the right to claim, disallowance or recapture as a result of Determination being hereinafter referred to as a "Tax Loss"), or if there shall be a Determination that there must be an inclusion in Lessor's gross income of any amount as a result of the making by Lessee of, or the payment by Lessee of the costs of, any alterations to the Equipment or otherwise ("Income Inclusion"), then Lessor shall notify Lessee in writing of such fact, and Lessee shall pay to Lessor, at such times as are provided for herein, as additional Rent, an amount necessary to permit Lessor to receive (on an after-tax basis over the full Term of the lease) the same rate of return that Lessor would have realized had there not been a loss or disallowance of such anticipated tax benefits or an increase in Lessor's gross income, together with the amount of any interest or penalties which may be assessed by the governmental taxing authorities with respect to such loss or disallowance or unanticipated inclusion in Lessor's gross income. The amounts payable pursuant to this Section 8.2 shall be payable upon demand by Lessor, accompanied by a statement describing in reasonable detail the loss or disallowance of such anticipated tax benefits or unanticipated inclusion in Lessor's gross income and setting forth the computation of the amounts so payable. For purposes of such computation it shall be assumed that Lessor could have fully utilized the deduction, credit, or other tax benefit or attribute at a Federal income tax rate as provided in the Code. Lessee shall not be obligated to make a payment to Lessor under this Section 8.2 in the event the sole cause of the loss or disallowance of the tax benefits or the unanticipated inclusion in Lessor's gross income results from one or more of the following events: (a) a disqualifying disposition due to sale or lease of the Equipment by Lessor prior to any default by Lessee; (b) a failure of Lessor timely to claim the accelerated cost recovery deductions for the Equipment in Lessor's tax returns unless such failure shall result from circumstances other than those caused by Lessor; (c) a foreclosure by any person holding through Lessor of a lien on the Equipment which foreclosure results solely from an act of Lessor; or (d) any event which by the terms of this lease requires payment by Lessee of the Stipulated Loss Value of the Equipment. For purposes of this Section 8.2, Lessor shall mean and include any affiliated group of corporations within the meaning of Section 1504 of the Code of which Lessor is a member for any year in which a consolidated income tax return is filed for such affiliated group.

8.3 Duration. All of Lessor's rights and privileges arising from the indemnities contained in this Section 8 shall survive the expiration or earlier termination of this lease, and such indemnities are expressly made for the benefit of, and shall be enforceable by Lessor, its successors and assigns.

8.4 Determination. For the purpose of this Agreement, a Determination shall mean and shall be deemed to have been made upon Lessor's receipt of notice of disallowance or similar notice from the applicable taxing authority or to any taxing authority of the tax increase or additional taxes resulting from a Tax Loss and/or Income Inclusion.

SECTION 9. DISCLAIMER OF WARRANTIES

9.1 No Representations by Lessor. Lessee acknowledges and agrees that it has selected each item, type, quality, quantity and supplier of Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor, and agrees that the Equipment is of a design, size, quality and capacity required by Lessee and is suitable for its purposes.

9.2 LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT, NOR AS TO LESSEE'S USE OF THE EQUIPMENT FREE FROM CLAIMS OF INTERFERENCE OR INFRINGEMENT, NOR DOES LESSOR MAKE ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT OR LESSEE'S USE THEREOF, AND, AS TO LESSOR, LESSEE LEASES THE EQUIPMENT AS IS.

9.3 Assignment of Manufacturer's Warranties. Notwithstanding the foregoing, Lessor hereby agrees to assign to Lessee, solely for the purpose of making and prosecuting any such claim, all of Lessor's rights against the manufacturer or supplier of the Equipment, including without limitation any rights for breach of warranty or other representation respecting the Equipment to the extent the same are assignable. All such rights shall be deemed to be assigned to Lessee upon Lessee's execution of an Acceptance Certificate.

SECTION 10. DEFAULT AND REMEDIES

10.1 Definition of Default. Lessee shall be deemed to be in default hereunder upon the happening of any of the following events of default:

(a) Lessee shall fail to pay Rent or other sum due hereunder when due or shall fail to perform or observe any term, condition or covenant of this lease or any Schedule of Leased Equipment hereto or any other agreement now in existence or hereafter executed with Lessor, Lessor's parent corporation, any of Lessor's subsidiary corporations or any affiliated company of Lessor;

(b) Proceedings under any bankruptcy, insolvency, reorganization or similar litigation shall be instituted by or against Lessee, or a receiver, custodian or similar officer shall be appointed for Lessee or any of its property; provided, however, no default shall be deemed to have occurred if Lessee causes any bankruptcy, insolvency, reorganization or similar litigation to be instituted against a third party (other than any guarantor);

(c) Any warranty, representation or statement made by Lessee is found to be incorrect or misleading in any material respect on the date made;

(d) An attachment, levy or execution is overtly threatened or levied upon or against the Equipment;

(e) Lessee shall make an assignment for the benefit of creditors, shall cease doing business as a going concern, or become insolvent;

(f) Lessee shall default under or otherwise have accelerated any material obligation, credit agreement, conditional sales contract or other lease;

(g) Any guarantor hereof shall die or become insolvent or there shall be a default under the guaranty agreement between guarantor and Lessor; or

(h) A liquidation shall occur in whole or in substantial part by Lessee or any guarantor of Lessee's or any guarantor's business, or a merger shall occur between Lessee or any guarantor with any other entity or any form of corporate reorganization

shall occur (whether in one transaction or a series of transactions), except (i) to the extent that Lessee or any guarantor is successor, survivor or parent, or (ii) if Lessee or any guarantor is not successor, survivor or parent, to the extent Lessor has received prior notice of and has approved such merger or corporate reorganization and the successor, survivor or parent assumes in writing the obligations of Lessee under this lease, and in the case of either clause (i) or (ii), only if the Tangible Net Worth of the successor, survivor or parent is equal to or greater than the Tangible Net Worth of Lessee or any guarantor as of the date of this lease and such guarantor continues to maintain a Tangible Net Worth of not less than \$600,000,000.

10.2 Remedies on Default. Upon the occurrence of any event of default and at any time thereafter, Lessor may, with or without terminating this lease, in its sole discretion, exercise any one or more of the following remedies:

(a) Declare immediately due and payable all Rent and other sums due and to become due hereunder as to any or all Schedules of Leased Equipment (including any renewal or purchase options which Lessee has contracted to pay);

(b) Terminate this lease as to any or all Schedules of Leased Equipment by written notice to Lessee;

(c) Proceed by appropriate court action to enforce performance by Lessee of the applicable covenants of this lease or to recover for the breach thereof;

(d) Repossess the Equipment wherever situated without any court order or other legal process and without liability for entering the premises where the Equipment may be located, and, in Lessor's sole discretion, sell, lease or make other disposition of the Equipment for the account of Lessee, all of which determinations shall be made by Lessor in its sole discretion;

(e) Without notice or demand, set off, appropriate and apply against any Rent or other sums due hereunder any and all sums of money held by Lessor for Lessee (whether on deposit or otherwise) and any and all other goods, instruments, security and property of every nature held by Lessor for Lessee;

(f) If this lease provides for a Stipulated Loss Value of the Equipment, with or without terminating this lease, recover the Stipulated Loss Value of the Equipment as of the rent payment date immediately preceding Lessee's date of default, plus all reasonable costs, expenses and commissions incurred by Lessor in the repossession, recovery, inspection, storage, repair, sale, lease or other disposition of the Equipment, including reasonable attorneys' fees and costs incurred in connection therewith or otherwise resulting from Lessee's default (all of such costs, expenses and commissions being hereinafter called "Costs and Expenses");

(g) If this lease does not provide for a Stipulated Loss Value of the Equipment, with or without terminating this lease, recover from Lessee damages, not as a penalty, but herein liquidated for all purposes and in an amount equal to the sum of (i) any accrued and unpaid Rent as of the date of entry of judgment in favor of Lessor; (ii) the present value, as of the same date, of all Rent to be paid over the remaining Term of this lease discounted at a discount rate equal to the one-year Constant Maturity Treasury Rate yield as set forth in the Federal Reserve Statistical release H-15 (519) (the "Discount Rate"); (iii) all Costs and Expenses; and (iv) all other sums due and payable by Lessee hereunder;

(h) If Lessor disposes of the Equipment by releasing the same pursuant to a lease agreement substantially similar to this lease and the new lease agreement is made in good faith and in a commercially reasonable manner, recover from Lessee damages equal to the sum of (i) accrued and unpaid Rent as of the date of the commencement of the term of the new lease agreement; (ii) the present value, as of the same

date, of all Rent to be paid over the then remaining Term of this lease minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining Term of this lease, in each case using a discount rate equal to the Discount Rate; and (iii) Costs and Expenses;

(i) If Lessor elects to retain the Equipment or Lessor elects to dispose of the Equipment and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 10.2(h) above, recover of Lessee damages in an amount equal to the sum of the greater of (A) the sum of (i) accrued and unpaid Rent as of the date Lessor repossesses the Equipment or such earlier date on which Lessee makes a tender of the Equipment to Lessor; (ii) the present value as of the date determined under clause (i) of the total Rent for the then remaining term of this lease minus the present value as of the same date of the market rent for the Equipment at the place where the Equipment is located computed for the same lease term, discounted to present value at the Discount Rate; and (iii) Costs and Expenses or (B) the sum of (i) the present value of the profit, including reasonable overhead, Lessor would have made from full performance by Lessee of its obligations hereunder, using a discount rate equal to the Discount Rate; and (ii) Costs and Expenses after due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition of the Equipment;

(j) If the Equipment is not repossessed by or tendered to Lessor, or if Lessor is unable after reasonable effort to dispose of the Equipment at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, recover of Lessee damages equal to the sum of (i) accrued and unpaid Rent as of the date of entry of judgment in favor of Lessor; (ii) the present value as of the same date of the Rent for the then remaining lease term of this lease; and (iii) Costs and Expenses;

(k) In addition to any other recovery permitted hereunder or under applicable law, Lessor may recover from Lessee an amount that will fully compensate Lessor for any loss of or damage to Lessor's residual interest in the Equipment; or

(l) Exercise any other rights or pursue any other remedies which may be available to Lessor under this lease or applicable law.

10.3 Further Remedies. A termination hereunder shall occur only upon notice by Lessor to Lessee and only with respect to such part or parts of the Equipment as Lessor specifically elects to terminate in such notice. Except as to those parts of the Equipment with respect to which there is a termination, this lease shall remain in full force and effect and Lessee shall be and remain liable for the full performance of all its obligations under this lease. All remedies of Lessor are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

10.4 Lessor's Expenses. Lessee shall pay Lessor all costs and expenses, including reasonable attorneys' fees and court costs, incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions, or provisions hereof.

10.5 Lessee's Waivers. To the extent permitted by applicable law, Lessee hereby waives any and all rights and remedies conferred upon Lessee by applicable law to (a) cancel or repudiate this lease; (b) reject the Equipment or revoke acceptance of the Equipment after delivery by Lessee of an Acceptance Certificate in the form attached as Exhibit A; (c) recover damages from Lessor for any breaches of warranty; and (d) a security interest in the Equipment in Lessee's possession or control for any reason.

SECTION 11. LESSEE'S PURCHASE AND RENEWAL OPTIONS

11.1 Lessee's Purchase Option. So long as no event of default shall have occurred and be continuing, Lessee shall be entitled, at its option, upon written notice to Lessor at least one-hundred eighty (180) days prior to the expiration of the Basic Term hereof (or, if this lease has been renewed pursuant to Section 11.2 hereof, the Renewal Term), to purchase or to solicit bids for the purchase of all but not less than all of the Equipment at the expiration of the Basic Term (or, if this lease has been renewed pursuant to Section 11.2 hereof, the Renewal Term), for an amount, payable in immediately available funds, equal to the fair market sales value of the Equipment as of the end of the Basic Term (or, if this lease has been renewed pursuant to Section 11.2 hereof, the Renewal Term), determined in accordance with Section 11.3 hereof, plus any applicable sales, excise or other taxes imposed as a result of such sale (other than gross or net income taxes attributable to such sale). Lessor's sale of the Equipment shall be on an as-is, where-is basis, without any representation or warranty by or recourse to Lessor. Lessor specifically excludes any warranty of merchantability or fitness for particular use or purpose with respect to the Equipment.

11.2 Lessee's Renewal Option. If (i) no event of default shall have occurred and be continuing, (ii) this lease shall not have been earlier terminated, and (iii) the creditworthiness of Lessee continues to be satisfactory in all respects to Lessor, Lessee shall be entitled, at its option upon written notice to Lessor at least one-hundred eighty (180) days prior to the expiration of the Basic Term hereof, to renew this lease with respect to all, but not less than all, of the Equipment for a Renewal Term mutually agreeable to Lessor and Lessee. The Renewal Term will commence at the expiration of the Basic Term hereof. All of the provisions of this lease shall be applicable during the Renewal Term, except that, during the Renewal Term, Basic Rent shall be the fair market rental value thereof determined in accordance with Section 11.3 hereof, and said rental shall be payable monthly in advance on the first day of each month of the Renewal Term.

11.3 Determination of Fair Market Sales Value or Fair Market Rental Value. If Lessee has elected to exercise its purchase option, as provided in Section 11.1 hereof, or has elected to exercise its renewal option, as provided in Section 11.2 hereof, then as soon as practicable following Lessor's receipt of the written notice from Lessee of Lessee's intent to exercise such option, Lessor and Lessee shall consult for the purpose of determining the fair market sales value or the fair market rental value, as the case may be, of the Equipment as of the end of the Basic Term hereof (or, if this lease has been renewed pursuant to Section 11.2 hereof, the Renewal Term), and any values agreed upon in writing shall constitute such fair market sales value or fair market rental value of the Equipment for the purposes of this Section 11. If Lessor and Lessee fail to agree upon such value prior to four (4) months before the expiration of the Basic Term hereof (or, if this lease has been renewed pursuant to Section 11.2 hereof, the Renewal Term), either party may request that such values be determined by the Appraisal Procedure as set forth in Section 11.4 hereof. Lessee agrees to pay all costs and expenses of all appraisers required in connection with the Appraisal Procedure. For all purposes of this Section 11, fair market sales value and fair market rental value shall be determined on the basis of, and shall equal in value, the amount which would be obtained in an arm's length transaction between an informed and willing buyer-user or lessee (other than a scrap dealer) and an informed and willing seller or lessor under no compulsion to sell or lease, and in such determination, costs of removal of the Equipment from its then location shall not be a deduction from such fair market sales value, and it shall be assumed (whether or not the same be true) that the Equipment has been maintained in accordance with the provisions of this lease and would have been returned to Lessor in compliance with the requirements of Section 5.2 hereof.

11.4 Appraisal Procedure. The procedure for determining the fair market sales value or the fair market rental value of the Equipment in the event that Lessor and Lessee fail to agree upon such values under the circumstances described in Section 11.3 hereof shall be as follows: if either party hereto shall have given written notice to the other requesting determination of such value by the Appraisal Procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within ten (10) business days after such notice is given, each party shall appoint an

independent appraiser within fifteen (15) business days after such notice is given, and the two appraisers so appointed shall within twenty (20) business days after such notice is given appoint a third independent appraiser. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine, within sixty (60) days after appointment, the fair market sales value or the fair market rental value, as the case may be, of the Equipment. If the parties shall have appointed a single appraiser, his or her determination of value shall be final. If three appraisers shall be appointed, the values determined by the three appraisers shall be averaged, and, unless such average shall equal the value determined by the middle appraisal (in which event such average shall be controlling) the appraisal that differs the most shall be excluded, the remaining two determinations shall be averaged and such average shall be final.

11.5 Early Termination with Respect to Obsolete Equipment. In the event that, in the good faith judgment of Lessee, (i) an item of Equipment shall have become economically obsolete or surplus to Lessee in its business, or (ii) Lessee is unable after good faith efforts to obtain approval for the use or continuation of use of an item of Equipment on a railway that Lessee requires to be used in connection with its operations, then Lessee may, at its option, upon not less than sixty (60) days prior written notice to Lessor, terminate this lease with respect to such item of Equipment on the due date of the Basic Rent installment or on any Basic Rent installment due date thereafter, provided that no event of default shall have occurred and be continuing. On the termination date Lessee shall pay in cash to Lessor the fair market sales value of such item of Equipment plus any amounts past due and unpaid and any other amounts currently due but unpaid hereunder for such items of Equipment. If the fair market sales value is less than the Stipulated Loss Value of such Equipment as set forth in the Schedule of Leased Equipment attached hereto and incorporated herein by reference computed as of such date, Lessor shall retain the entire fair market sales value and Lessee shall pay to Lessor in cash the excess of such Stipulated Loss Value over such fair market sales value. If the fair market sales value of such Equipment shall be greater than the Stipulated Loss Value of such Equipment, computed as of such date, the amount of such excess shall be retained by Lessor. Upon such payment, Lessee shall become entitled to such item of Equipment as-is and where-is without warranty, expressed or implied, with respect to any matter whatsoever.

SECTION 12. ASSIGNMENT

12.1 Prohibition on Assignment by Lessee. LESSEE SHALL NOT SELL, ASSIGN, PLEDGE OR OTHERWISE ENCUMBER OR SUFFER A LIEN OR ENCUMBRANCE UPON OR AGAINST ANY INTEREST IN THIS LEASE OR THE EQUIPMENT OR IN ANY WAY DISPOSE OF ALL OR ANY PART OF ITS RIGHTS OR OBLIGATIONS UNDER THIS LEASE OR ENTER INTO ANY LEASE OR SUBLEASE OF ALL OR ANY PART OF THE EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD. LESSEE SHALL NOT PERMIT THE EQUIPMENT TO BE USED BY ANYONE OTHER THAN LESSEE WITHOUT LESSOR'S PRIOR WRITTEN CONSENT. LESSEE'S INTEREST HEREIN MAY NOT BE ASSIGNED OR TRANSFERRED BY OPERATION OF LAW. IF THERE IS A CHANGE IN CONTROL OF LESSEE, SUCH CHANGE IN CONTROL SHALL BE DEEMED TO BE AN ASSIGNMENT OF THIS LEASE FOR PURPOSES OF THIS SECTION 12.1. FOR PURPOSES HEREOF, A SALE, TRANSFER, LEASE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF LESSEE OR ANY SIGNIFICANT DIVISION OF LESSEE SHALL BE DEEMED TO BE A PROHIBITED ASSIGNMENT HEREUNDER. AS USED ABOVE, "SUBSTANTIALLY ALL" SHALL MEAN GREATER THAN 50% BASED ON FAIR MARKET VALUE AT THE TIME OF THE DETERMINATION, AND "SIGNIFICANT DIVISION" SHALL MEAN ANY DIVISION COMPRISING 20% OF THE VALUE OF LESSEE BASED ON FAIR MARKET VALUE AT THE TIME OF THE DETERMINATION. NOTWITHSTANDING THE FOREGOING, EXCEPT IF A DEFAULT HEREUNDER SHALL HAVE OCCURRED AND BE CONTINUING, LESSEE MAY ASSIGN ITS RIGHTS AND DELEGATE ITS OBLIGATIONS UNDER THIS LEASE IN CONNECTION WITH ANY MERGER, CONSOLIDATION OR SIMILAR TRANSACTION INVOLVING LESSEE OR ANY AFFILIATE OF ANY LESSEE PROVIDED THAT (A) SUCH MERGER, CONSOLIDATION OR SIMILAR TRANSACTION WOULD NOT RESULT IN THE OCCURRENCE OF A DEFAULT HEREUNDER, (B) LESSEE GIVES LESSOR THIRTY (30) DAYS' PRIOR WRITTEN NOTICE OF SUCH ASSIGNMENT, (C) THE ASSIGNEE ASSUMES THE OBLIGATIONS OF LESSEE HEREUNDER, (D) THE OBLIGATIONS OF ANY GUARANTOR UNDER ANY GUARANTY EXECUTED AND DELIVERED IN CONNECTION WITH THIS LEASE REMAIN IN FULL FORCE AND EFFECT AND EACH GUARANTOR REAFFIRMS ITS OBLIGATIONS UNDER ITS GUARANTY, AND (E) AT LESSEE'S SOLE COST AND EXPENSE LESSEE SHALL HAVE EXECUTED AND DELIVERED, OR SHALL HAVE HAD EXECUTED AND DELIVERED, SUCH DOCUMENTS IN CONNECTION WITH OR DUE TO SUCH ASSIGNMENT AS LESSOR MAY REASONABLY REQUIRE, INCLUDING A SPECIFIC ASSIGNMENT OF THIS LEASE.

12.2 Assignment by Lessor. Lessor may, at any time and from time to time, and without notice to Lessee, assign or transfer all or any part of its interest in the Equipment or this lease, including without limitation, Lessor's rights to receive Rent and any additional payments due and to become due hereunder. After the giving of notice of such assignment to Lessee, Lessee shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective. Any assignee of Lessor shall have all the rights, but none of the obligations of Lessor under this lease, which obligations, as between Lessor and Lessee, will continue to be obligations of Lessor unless Lessor is specifically released by Lessee, and Lessee agrees that it will not assert against any assignee of Lessor any defense, counterclaim or offset that Lessee may have against Lessor. Lessee acknowledges that any assignment or transfer by Lessor shall not materially change Lessee's duties or obligations under this lease nor materially increase the burdens or risks imposed on Lessee. In the event of any assignment under this Section 12.2, Lessor, as between Lessor and Lessee, shall be responsible for all costs in connection with the assignment.

SECTION 13. MISCELLANEOUS

13.1 Waiver. No covenant or condition of this lease can be waived except by the written consent of Lessor. Any failure of Lessor to require strict performance by Lessee or any waiver by Lessor of any terms, covenants or agreements herein shall not be construed as a waiver of any other breach of the same or of any other term, covenant or agreement herein.

13.2 Force Majeure. Neither Lessor nor Lessee shall be liable for any failure or delay in delivering the Equipment, or in performing any provision hereof, due to fire or other casualty, labor difficulty, governmental restriction or any cause beyond either party's control.

13.3 Severability. In the event any portion of this lease shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this lease shall continue in full force and effect.

13.4 Governing Law. This lease shall be construed, interpreted and enforced in accordance with the laws of the state of North Carolina.

13.5 Notice. All notices made or required to be given pursuant to this lease shall be in writing and shall be deemed duly served if and when mailed, certified or registered mail, postage prepaid, return receipt requested, to the other party at its address set forth above or at such other address as such party shall hereafter designate in writing.

13.6 Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this lease.

13.7 Entire Agreement. This lease, together with the Schedules of Leased Equipment hereto and any written lease commitment issued by Lessor, constitutes the entire indivisible agreement between the parties and this lease shall not be modified, amended, altered or changed except by written agreement signed by the parties. Lessee hereby expressly acknowledges and accepts this provision.

LESSEE:

CRYSTAL CAR LINE, INC.

By: 

13.8 Binding Effect. Subject to the specific provisions of this lease, this lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

13.9 Additional Documents. If Lessor shall request, Lessee shall execute and deliver to Lessor such documents as Lessor shall reasonably require to protect the interest of the Lessor in the Equipment. Lessee irrevocably appoints Lessor as Lessee's attorney-in-fact to execute and file

such financing statements in Lessee's behalf. Lessee shall pay the fees and Lessor's reasonable out-of-pocket expenses for any such recording or filing and shall pay any stamp or documentary taxes assessed upon the lease.

13.10 Time. Time is of the essence of this lease and each Schedule of Leased Equipment and all of the provisions hereof and thereof.

13.11 Statute of Limitations. Any action by Lessee against Lessor for any default by Lessor under this lease shall be commenced within one (1) year after any such cause of action accrues.

13.12 Conditions Precedent. Lessee's obligations hereunder are expressly conditioned upon and subject to the execution by Lessor of a Purchase Agreement Assignment attached hereto as Exhibit C and payment of the purchase price of the Equipment in accordance therewith; provided, however, that Lessor's obligation to pay the purchase price of the Equipment thereunder or hereunder shall not arise until (i) Lessee's delivery of an Acceptance Certificate or a Supplemental Approval under the lease and (ii) the Equipment's becoming irrevocably subject to the terms and conditions of the lease; provided, further, that Lessor shall not be required to pay any part of the purchase price of the Equipment in the event that, upon payment of the purchase price of the Equipment, a default or event of default would be existing hereunder. In the event of Lessor's breach of its obligation to execute the Purchase Agreement Assignment or to pay the purchase price as set forth in the Purchase Agreement Assignment, Lessee may terminate and cancel this lease with no further obligation to Lessor hereunder with respect to any Equipment accepted by Lessee and for which the purchase price has not been paid by Lessor.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be executed as of the day and year first above written.

LESSEE:

CRYSTAL CAR LINE, INC.

By: _____

J. J. Farrell Jr.
President

(Name and Title)

ATTEST:

Pat Riten

- Secretary

(CORPORATE SEAL)

LESSOR:

FIRST UNION COMMERCIAL CORPORATION

By: _____

Linda H. Murda

Assistant Vice President

(Name and Title)

EXHIBIT A

ACCEPTANCE CERTIFICATE NO. _____

In accordance with the terms of the Equipment Lease ("Lease") dated as of August 26, 1992, and the Schedule of Leased Equipment Number _____ dated as of 19____, by and between FIRST UNION COMMERCIAL CORPORATION ("Lessor") and CRYSTAL CAR LINE, INC. ("Lessee") or other agreements between Lessor and Lessee, Lessee and Lessor agree as follows: (a) the Equipment referred to below has been delivered at the location specified in the Lease or other agreement; (b) Lessee has conducted such inspection and testing of the Equipment as Lessee deems necessary and appropriate and Lessee acknowledges that as between Lessor (and its successors and assigns) and Lessee the Equipment is in good condition, and is performing satisfactorily, and that Lessee accepts the Equipment for all purposes; and (c) Lessee approves the Equipment and authorizes and directs FIRST UNION COMMERCIAL CORPORATION to pay the manufacturer(s) or supplier(s) thereof the amount shown below:

LESSEE P.O. #	VENDOR	INVOICE #	AMOUNT
---------------	--------	-----------	--------

EQUIPMENT LOCATION: Street: _____
 City: _____
 County: _____
 State: _____

Will the Equipment be housed within the city limits? ☐ yes ☐ no

The above Equipment is accepted this _____ day of _____, 19____.

CRYSTAL CAR LINE, INC.
 Lessee

By: EXHIBIT ONLY - DO NOT SIGN

Title: _____

 Lessor hereby advises Lessee that, in accordance with Lessee's instructions above, the following:

FUNDING DATE: _____ BASIC TERM COMMENCEMENT DATE: _____

SUPPLEMENTAL RENT RATE: _____ NO. OF DAYS: _____ AMT. DUE: _____

INTERIM RENT: _____ NO. OF DAYS: _____ AMT. DUE: _____

BASIC RENT RATE FACTOR:	BASIC RENT:
MTHS 01-__: _____%	MTHS. 01-__: _____

EXHIBIT BSUPPLEMENTAL APPROVAL NO. _____

CRYSTAL CAR LINE, INC. ("Lessee") hereby issues to FIRST UNION COMMERCIAL CORPORATION ("Lessor") this Supplemental Approval in accordance with the terms of the Equipment Lease ("Lease") dated as of August 26, 1992, and the Schedule of Leased Equipment Number _____ dated as of _____, 19____, by and between Lessee and Lessor. All capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Lease.

Lessee confirms that the payment indicated on the attached copy of the invoice is properly due and owing, and Lessee hereby instructs Lessor to make payment to the invoicing manufacturer in accordance with said invoice.

Lessee agrees that the Equipment subject to the attached invoice ("Equipment") shall be delivered to and accepted by Lessee on or before _____. In the event, for any reason whatsoever, that on or before that date, all the Equipment has not been delivered and accepted by Lessee or all of the conditions of the Lease have not been satisfied, Lessee shall purchase from Lessor, on an as-is and where-is basis without warranty, express or implied, with respect to any matter whatsoever except that there are no liens or encumbrances on the Equipment created by Lessor, all of Lessor's right, title and interest in and to the purchase order for the Equipment not so delivered and accepted and in and to the Equipment not so delivered and accepted for the aggregate total amount which Lessor has paid therefor, plus all Supplemental Rent to and including the date of such payment under the terms of this Supplemental Approval, and plus all other sums due and owing under the Lease. The deadline date stated in this paragraph may be extended at the sole option of Lessor upon a showing of good cause for such extension by Lessee.

IN WITNESS WHEREOF, Lessee has executed this Supplemental Approval on this _____ day of _____, 19____.

CRYSTAL CAR LINE, INC.

Lessee

By: EXHIBIT ONLY - DO NOT SIGN

Title: _____

Lessor hereby instructs Lessee that, in accordance with Lessee's instructions above, Lessor has made the following payment:

Manufacturer or Supplier:

Invoice Number:

Amount:

Check Number:

EXHIBIT C

PURCHASE AGREEMENT ASSIGNMENT

THIS PURCHASE AGREEMENT ASSIGNMENT, dated _____, 19____, from Crystal Car Line, Inc., an Illinois corporation ("Assignor"), to First Union Commercial Corporation, a North Carolina corporation ("Assignee").

WHEREAS, Assignor has entered into certain purchase orders, contracts, and agreements (said purchase orders, as heretofore or hereafter amended, modified or supplemented, are herein called the "Purchase Agreement") between Assignor and various manufacturers or vendors, including _____ ("Vendor"), copies of which are attached hereto, providing for the sale to Assignor of the unit(s) of equipment described in the Purchase Agreement (the "Units"); and

WHEREAS, Assignor desires that Assignee acquire the Units and lease the Units to Assignor pursuant to the terms of an Equipment Lease, dated August 26, 1992, between Assignor and Assignee (the "Lease");

NOW, THEREFORE, in consideration of the foregoing, Assignor and Assignee agree as follows:

1. The parties hereto acknowledge and agree that the Purchase Agreement Assignment is for the purpose of affecting a financing/leasing arrangement between the Assignor and the Assignee. Accordingly, notwithstanding anything to the contrary contained herein, Assignor shall retain all warranties and other rights as against the Vendor and shall not be deemed to have relinquished or waived its right to enforce the benefits of the purchaser as against the Vendor under the Purchase Agreement. Assignor hereby sells, assigns, and transfers to Assignee and its successors and assigns all of Assignor's right, title and interest (but none of Assignor's duties or obligations) in and to the Purchase Agreement and the Units. The right, title and interest assigned pursuant to this section shall include the right to take title to the Units pursuant to bills of sale from Vendor. Notwithstanding anything herein contained to the contrary, the Assignor retains and is entitled to the promises and warranties, if any, including those of any third party, provided by the Vendor in connection with or as part of the Purchase Agreement. Further, it is agreed that the Assignor may communicate with the Vendor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies; provided, however, as between Assignor and Assignee, Assignee's obligations to pay the purchase price for the Equipment shall arise only upon (i) Assignor's delivery of an Acceptance Certificate or a Supplemental Approval under the Lease, (ii) such Units becoming irrevocably subject to the terms and conditions of the Lease, (iii) no default or event of default existing or continuing under the Lease (or would be existing or continuing under the Lease upon the payment of the purchase price for the Units), and (iv) the purchase price for the Units together with the purchase price of all other Units delivered under the Lease shall not exceed \$_____.

2. It is agreed that, anything herein contained to the contrary notwithstanding, (a) except as otherwise specifically provided herein, Assignee has not and does not by virtue of this Purchase Agreement Assignment assume any of Assignor's obligations or liabilities and that Assignee shall not have any obligation or liability under the Purchase Agreement, whether arising prior to or after the date of this Purchase Agreement Assignment, (b) except after the satisfaction of all conditions precedent as set forth and otherwise set forth herein as to obligations specifically assumed by Assignee hereunder, Assignor shall at all times remain liable to Vendor under the Purchase Agreement to perform all the duties and obligations of the purchaser thereunder to the same extent as if this Purchase Agreement Assignment had not been executed, (c) except after the satisfaction of all conditions precedent as set forth and otherwise set forth herein as to obligations specifically assumed by Assignee hereunder, the exercise by Assignee of any of the rights assigned hereunder shall not release Assignor from its duties or obligations to Vendor under the Purchase Agreement, (d) Assignee shall not be obligated to make any payment to Vendor other than an amount equal to the purchase price of the Units as shown on the Purchase Agreement attached hereto and (e) the obligation of Assignee to purchase the Units is conditioned upon the execution by Assignor and delivery to Assignee of an Acceptance Certificate in form and substance similar to the Acceptance Certificate attached to the Lease as Exhibit A relating to the Units in form satisfactory to Assignee and the fulfillment by Assignor of the conditions set forth in the Lease.

3. At any time and from time to time, upon the written request of Assignee, Assignor agrees to promptly and duly execute and deliver any and all such further documents and take such further actions as Assignee may reasonably request in order to obtain the full benefits of this Purchase Agreement Assignment and of the rights and powers herein granted.

4. Assignor represents and warrants that (a) true copies of the Purchase Agreement are attached hereto complete with any and all supplements or amendments thereto or other agreements of any kind relating to the Units; (b) the Purchase Agreement is in full force and effect and enforceable in accordance with its terms and Assignor is not in default thereunder; (c) Assignor has not heretofore assigned or pledged the whole or any part of the Purchase Agreement or any interest therein or of any rights assigned hereby and shall not assign or pledge, so long as this Purchase Agreement Assignment remains in effect, the whole or any part of the rights hereby assigned, to anyone other than Assignee; (d) Assignor has the right to assign the Purchase Agreement as set forth herein; (e) the right, title and interest of Assignor in the Purchase Agreement so assigned is free from all claims, liens, security interests and encumbrances; (f) Assignor shall warrant and defend the assignment against lawful claims and demands of all third persons (other than Assignee and its successors and assigns); (g) the Purchase Agreement contains no expressed conditions (and to the best of Assignor's knowledge, no other conditions exist) under which Vendor may reclaim title to any Units after delivery, acceptance and payment therefor; (h) Assignor has made no payments or advances of money with respect to the Units to the Vendor or any other person; (i) none of the Units have been delivered by the Vendor; (j) to the best of Assignor's knowledge no consent of or notice to the Vendor is required for the valid and effective assignment to Assignee of all rights assigned hereby; and (k) upon payment by Assignee of the Vendor's invoice for the Units, Assignee shall acquire title hereto, free and clear of all liens and encumbrances other than liens and encumbrances arising by or through Assignee,

including without limitation, claims of any persons having any interest in the premises in which the Units are to be installed and claims of all persons claiming by, through or under the Assignor. Except as otherwise permitted in Section 12 of the Lease, entitled "Assignment", Assignor covenants and agrees that so long as this Purchase Agreement Assignment shall remain in effect, it will not assign or pledge the whole or any part of the rights assigned hereby or, without the prior written consent of the Assignee, amend, modify or terminate the Purchase Agreement.

5. Except for the gross negligence or willful misconduct of Assignee, Assignee shall not be responsible for the Vendor's failure to honor this Purchase Agreement Assignment or to accept the Purchase Agreement or to deliver the Units in accordance with the terms thereof.

6. Except for the gross negligence or willful misconduct of Assignee, Assignor does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Assignee and its respective successors, assigns, employees, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, and expenses of whatsoever kind and nature, including but not limited to attorneys' fees and costs, imposed on, incurred by or asserted against Assignee or its successors, assigns, employees, agents and servants (whether or not also indemnified against by the Vendor or any other person) in any way relating to or arising out of the Purchase Agreement, this Purchase Agreement Assignment, or the manufacture, purchase, delivery, installation, testing, use, acceptance, or rejection under the Purchase Agreement (including the amount of any sales, use or other taxes not paid or discharged at the time of payment for the Units hereunder). Assignor hereby assumes and agrees to perform all terms, conditions, covenants and obligations imposed upon Assignor under the Purchase Agreement or the Assignee by its execution of this Purchase Agreement Assignment and to be solely liable to make all payments to be made under the Purchase Agreement, except the obligations of Assignee (should the same arise hereunder) to pay the purchase price. The provisions of this paragraph shall survive the termination or cancellation of all or any of the provisions of this Purchase Agreement Assignment.

7. This Purchase Agreement Assignment shall not be modified, amended, altered, or changed except by written agreement signed by the parties hereto and shall be construed, interpreted, and enforced in accordance with the laws of the State of North Carolina.

8. This Purchase Agreement Assignment is for the sole benefit of Assignee and Assignor and their successors and assigns, and no other person, including the Vendor, shall obtain any rights or claims hereunder whatsoever against Assignee or Assignor with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Purchase Agreement Assignment to be duly executed as of the day and year first written above.

CRYSTAL CAR LINE, INC.
(Assignor)

By: _____

Title: _____

FIRST UNION COMMERCIAL CORPORATION
(Assignee)

By: _____

Title: _____

Vendor hereby consents and agrees to the terms and conditions of the Purchase Agreement Assignment set forth above.

(Vendor)

By: _____

Title: _____